



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/148478

PRELIMINARY RECITALS

Pursuant to a petition filed April 01, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on May 16, 2013, at Milwaukee, Wisconsin.

The issues for determination are 1) whether petitioner's appeal was timely filed for her November and December, 2012 FS and 2) whether the agency correctly determined her FS for January, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On November 21, 2012 the county agency sent a written notice of action to the petitioner for her January 2013 FS. Exhibit 2.

3. On December 14, 2012, the county agency sent a written notice of action to the petitioner for her November and December FS. Exhibit 1.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on April 1, 2013.

DISCUSSION

1. November and December FS.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., §273.15(g). The petitioner's appeal was filed 108 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case. And even if I could go along with her argument that she didn't understand the notice to appeal it timely, she was given that information in February during which time she could have filed a timely appeal for these months' FS benefits.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

2. January FS.

The same analysis above would apply to the January FS issue as that notice was issued even earlier than the December notice above. However, I find this appeal is timely as a matter of law because the agency failed to issue adequate notice in that it erroneously gave petitioner until April 2, 2013 to file the appeal. The time limitation on the appeal right does not apply where defective notice is given. Thus, it was a timely appeal and jurisdiction exists for considering the merits of the case.

The merits of the case are simple. The agency failed to give petitioner the deduction she should have received for dependent care expenses. In determining the amount of FS to be issued each month, the county must budget all income of the FS household, including all earned and unearned income. 7 C.F.R. §273.9(b). From the gross household income, the following permissible deductions as discussed in the *FoodShare Handbook*, §4.6.1 are allowed: a standard deduction, an earned income deduction, a medical expenses deduction, a child support payment deduction, a dependent care expense deduction, and a shelter expense deduction. Some FS groups are not allowed a deduction for some expenses and some expenses are not always deducted in full. The *FS Handbook* can be viewed online at <http://www.emhandbooks.wi.gov/fsh/>. The agency agreed at hearing that it had failed to do so. There being no evidence to the contrary, I will remand the matter so that the agency can redetermine her FS for January and issue any FS to which she is eligible.

CONCLUSIONS OF LAW

1. There is no jurisdiction as the appeal is untimely for her November and December, 2012 FS.
2. The agency failed to budget petitioner's dependent care expenses into her January 2013 FS calculation.

THEREFORE, it is**ORDERED**

That the matter is remanded to the agency with instructions to take the administrative steps necessary to redetermine petitioner's FS effective January 1, 2013 using the correct dependent care expenses for her FS deductions, issue any FS accordingly, and issue a notice of decision regarding that action. These actions shall be completed within 10 days of the date of this Decision. In all other respects, the petition herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of May, 2013

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 23, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability